

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
(Roanoke Division)

UNITED STATES OF AMERICA,)
Plaintiff,) Case No. 7:20cv767
v.)
JEFFREY L. PERSINGER, and)
MELISSA H. PERSINGER,)
Defendants.)

)

COMPLAINT

The Plaintiff, the United States of America, with the authorization of the Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of the Treasury, and at the direction of the Attorney General of the United States, brings this action to collect the trust fund recovery penalties assessed against Jeffrey L. Persinger and Melissa H. Persinger pursuant to 26 U.S.C. § 6672 for several quarters between the first quarter of 2006 through the fourth quarter of 2009 for their failure to pay over to the United States taxes withheld from the salaries paid to the employees of J & D Pallets, Inc.

JURISDICTION & VENUE

1. Jurisdiction is conferred upon this Court pursuant to 28 U.S.C. §§ 1331, 1340, and 1345, and 26 U.S.C. § 7402.
2. The liabilities and taxes accrued in this judicial district. Defendants Jeffrey L. Persinger and Melissa H. Persinger reside in Alleghany County, Virginia. Alleghany County is located within the Roanoke Division of the U.S. District Court for the Western District of Virginia. *See Local Civil Rule 2(a)(7).* Thus, venue is proper under 28 U.S.C. §§ 1331(b), 1339.

PARTIES

3. Plaintiff is the United States of America.

4. Upon information and belief, Defendants Jeffrey L. Persinger and Melissa H. Persinger reside in Alleghany County, which is within the jurisdiction of this Court and Division.

**COUNT I: REDUCE TRUST FUND RECOVERY PENALTIES TO JUDGMENT
AGAINST JEFFREY L. PERSINGER**

5. The United States incorporates Paragraphs 1 through 4 of this Complaint as if fully set forth herein.

6. At all relevant times, Jeffrey L. Persinger was the President of J & D Pallets, Inc. (“**J & D Pallets**”), a Virginia stock corporation located in Clifton Forge, Virginia.

7. Under the Internal Revenue Code, employers are required to deduct and pay over to the United States a portion of their employee’s wages for Social Security, Medicare, and federal income tax withholding. 26 U.S.C. § 3101, *et seq.*

8. Section 6672 of the Internal Revenue Code imposes a penalty upon any person required to collect, truthfully account for, and pay over the withholdings described in Paragraph 7, above, but who willfully fails to do so.

9. During the first quarter of 2006 through the fourth quarter of 2009 (the “**Relevant Time Period**”), Jeffrey L. Persinger was a person who was responsible for collecting, truthfully accounting for, and paying over to the Internal Revenue Service the federal income, Medicare, and social security taxes (the “**Employment Taxes**”) withheld from the wages of the employees of J & D Pallets.

10. During the Relevant Time Period, Jeffrey L. Persinger had check-signing authority on behalf of J & D Pallets.

11. During the Relevant Time Period, Jeffrey L. Persinger signed checks on behalf of J & D Pallets.

12. Jeffrey L. Persinger willfully failed to collect, truthfully account for, or pay over to the United States the federal employment tax withholdings of J & D Pallets which rendered him liable for a penalty under 26 U.S.C. § 6672 equal to the total amount of the taxes not collected, accounted for, and paid over.

13. Pursuant to 26 U.S.C. § 6672, a delegate of the Secretary of the Treasury assessed the following trust fund recovery penalties on January 3, 2011 against Jeffrey L. Persinger for amounts withheld from the wages of employees of J & D Pallets, but not turned over to the United States as set forth in the table below:

Tax Period	Initial Assessment Amount	Total Balance as of January 4, 2021
03/31/2006	\$14,827.42	\$91.70
06/30/2006	\$14,870.68	\$6,890.06
09/30/2006	\$13,564.89	\$19,738.17
12/31/2006	\$14,715.80	\$21,270.43
03/31/2007	\$16,147.24	\$23,495.73
06/30/2007	\$14,898.21	\$21,678.27
09/30/2007	\$14,279.68	\$20,778.25
03/31/2008	\$12,359.19	\$17,983.75
06/30/2008	\$12,856.76	\$18,707.75
09/30/2008	\$11,702.98	\$17,028.91
12/31/2008	\$10,187.74	\$14,824.11
09/30/2009	\$6,658.34	\$9,688.50
12/31/2009	\$6,815.44	\$9,917.10
Total:		\$202,092.73

14. A delegate of the Secretary of the Treasury gave notice of the penalty assessments set forth in Paragraph 13, above, to Jeffrey L. Persinger, and made demand upon him for the payment of those assessments.

15. Interest has been assessed and has accrued according to law on the unpaid balance of the assessments set forth in Paragraph 13, above, and will continue to accrue until paid in full.

16. Despite notice and demand for payment, Jeffrey L. Persinger has failed or refused to pay the full amounts due and owing for the penalty assessments set forth in Paragraph 13, above.

17. By reason of the assessments made on January 3, 2011 and described in Paragraph 13, above, Jeffrey L. Persinger is indebted to the United States for trust fund recovery penalties and statutory additions and interest to the penalties in the total amount of **\$202,092.73** as of January 4, 2021, plus statutory additions and interest that will continue to accrue after that date according to law.

**COUNT II: REDUCE TRUST FUND RECOVERY PENALTIES TO JUDGMENT
AGAINST MELISSA H. PERSINGER**

18. The United States incorporates Paragraphs 1 through 17 of this Complaint as if fully set forth herein.

19. During the Relevant Time Period, Melissa H. Persinger was the Secretary of J & D Pallets.

20. During the Relevant Time Period, Melissa H. Persinger was a person responsible for collecting, truthfully accounting for, and paying over to the Internal Revenue Service the Employment Taxes withheld from the wages of the employees of J & D Pallets.

21. During the Relevant Time Period, Melissa H. Persinger had check-signing authority on behalf of J & D Pallets.

22. During the Relevant Time Period, Melissa H. Persinger signed checks on behalf of J & D Pallets.

23. During the Relevant Time Period, Melissa H. Persinger directed payments of bills of J & D Pallets.

24. During the Relevant Time Period, Melissa H. Persinger guaranteed loans on behalf of J & D Pallets.

25. During the Relevant Time Period, Melissa H. Persinger authorized payroll on behalf of J & D Pallets.

26. During the Relevant Time Period, Melissa H. Persinger made federal tax deposits on behalf of J & D Pallets.

27. During the Relevant Time Period, Melissa H. Persinger signed tax returns on behalf of J & D Pallets.

28. During the Relevant Time Period, Melissa H. Persinger hired and fired employees of J & D Pallets.

29. Melissa H. Persinger willfully failed to collect, truthfully account for, or pay over to the United States the federal employment tax withholdings of J & D Pallets which rendered her liable for a penalty under 26 U.S.C. § 6672 equal to the total amount of the taxes not collected, accounted for, and paid over.

30. Pursuant to 26 U.S.C. § 6672, a delegate of the Secretary of the Treasury assessed the following trust fund recovery penalties on January 3, 2011 against Melissa H. Persinger for amounts withheld from the wages of employees of J & D Pallets, but not turned over to the United States as set forth in the table on the following page:

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Tax Period	Initial Assessment Amount	Total Balance as of January 4, 2021
03/31/2006	\$14,827.42	\$97.88
06/30/2006	\$14,870.68	\$6,890.06
09/30/2006	\$13,564.89	\$19,738.17
12/31/2006	\$14,715.80	\$21,270.43
03/31/2007	\$16,147.24	\$23,495.73
06/30/2007	\$14,898.21	\$21,678.27
09/30/2007	\$14,279.68	\$20,778.25
03/31/2008	\$12,359.19	\$17,983.75
06/30/2008	\$12,856.76	\$18,707.75
09/30/2008	\$11,702.98	\$17,028.91
12/31/2008	\$10,187.74	\$14,824.11
09/30/2009	\$6,658.34	\$9,688.50
12/31/2009	\$6,815.44	\$9,917.10
Total:		\$202,098.91

31. A delegate of the Secretary of the Treasury gave notice of the penalty assessments set forth in Paragraph 30, above, to Melissa H. Persinger, and made demand upon her for the payment of those assessments.

32. Interest has been assessed and accrued according to law on the unpaid balance of the assessments set forth in Paragraph 30, above, and will continue to accrue until paid in full.

33. Despite notice and demand for payment, Melissa H. Persinger has failed or refused to pay the full amounts due and owing for the penalty assessments set forth in Paragraph 30, above.

34. By reason of the assessments made on January 3, 2011 and described in Paragraph 30, above, Melissa H. Persinger is indebted to the United States for trust fund recovery penalties and statutory additions and interest to the penalties in the total amount of **\$202,098.91** as of January 4, 2021, plus statutory additions and interest that will continue to accrue after that date according to law.

RELIEF REQUESTED

WHEREFORE, the United States of America respectfully requests that the Court:

- A. Enter judgment in favor of the United States and against Jeffrey L. Persinger for his unpaid trust fund recovery penalties of J & D Pallets, Inc. under 26 U.S.C. § 6672 for the quarters identified in Paragraph 13, above, in the amount of **\$202,092.73** as of January 4, 2021, together with statutory additions and interest accruing after that date according to law;
- B. Enter judgment in favor of the United States and against Melissa H. Persinger for her unpaid trust fund recovery penalties of J & D Pallets, Inc. under 26 U.S.C. § 6672 for the quarters identified in Paragraph 30, above, in the amount of **\$202,098.91** as of January 4, 2021, together with statutory additions and interest accruing after that date according to law;
- C. Award the United States its costs incurred in prosecuting this action; and
- D. Grant such other and further relief to the United States as the Court deems just and proper.

Dated: December 23, 2020

RICHARD E. ZUCKERMAN
Principal Deputy Assistant Attorney General

/s/ Alexander R. Kalyniuk
Alexander R. Kalyniuk
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Counsel for the United States of America

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

United States of America

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)(c) Attorneys (Firm Name, Address, and Telephone Number)
Alexander R. Kalyniuk, United States Department of Justice, P.O. Box
227, Ben Franklin Station, Washington, D.C. 20044, (202) 616-3309**DEFENDANTS**Jeffrey L. Persinger
Melissa H. PersingerCounty of Residence of First Listed Defendant Alleghany
(IN U.S. PLAINTIFF CASES ONLY)NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.Attorneys (If Known)
Unknown.**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- | | |
|---|---|
| <input checked="" type="checkbox"/> 1 U.S. Government Plaintiff | <input type="checkbox"/> 3 Federal Question
(U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity
(Indicate Citizenship of Parties in Item III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 375 False Claims Act
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability		<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 330 Federal Employers' Liability		<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 345 Marine Product Liability		<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability		<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 370 Other Fraud		<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 371 Truth in Lending		<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 380 Other Personal Property Damage		<input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692)
<input type="checkbox"/> 190 Other Contract		<input type="checkbox"/> 385 Property Damage Product Liability		<input type="checkbox"/> 485 Telephone Consumer Protection Act
<input type="checkbox"/> 195 Contract Product Liability				<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 196 Franchise				<input type="checkbox"/> 850 Securities/Commodities/ Exchange
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	SOCIAL SECURITY	
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 440 Other Civil Rights	Habeas Corpus:	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 463 Alien Detainee	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 896 Arbitration
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	Other:		<input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
	<input type="checkbox"/> 448 Education	<input type="checkbox"/> 540 Mandamus & Other		<input type="checkbox"/> 950 Constitutionality of State Statutes
		<input type="checkbox"/> 550 Civil Rights		
		<input type="checkbox"/> 555 Prison Condition		
		<input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		
		IMMIGRATION	FEDERAL TAX SUITS	
		<input type="checkbox"/> 462 Naturalization Application	<input checked="" type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	
		<input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN (Place an "X" in One Box Only)

- | | | | | | | |
|---|---|--|---|--|--|---|
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from Another District (specify) _____ | <input type="checkbox"/> 6 Multidistrict Litigation - Transfer | <input type="checkbox"/> 8 Multidistrict Litigation - Direct File |
|---|---|--|---|--|--|---|

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
26 U.S.C. § 6672**VI. CAUSE OF ACTION**Brief description of cause:
Suit to collect trust fund recovery penalties

VII. REQUESTED IN COMPLAINT:	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.	DEMAND \$	202,098.91	CHECK YES only if demanded in complaint: JURY DEMAND:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
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VIII. RELATED CASE(S) IF ANY	(See instructions):	JUDGE	DOCKET NUMBER
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DATE	SIGNATURE OF ATTORNEY OF RECORD		
12/23/2020	/s/ Alexander R. Kalyniuk		

FOR OFFICE USE ONLYRECEIPT # _____ AMOUNT **n/a** APPLYING IFFP _____ JUDGE **Dillon** MAG. JUDGE _____

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